

MAYER BROWN LLP
John Nadolenco (SBN 181128)
jnadolenco@mayerbrown.com
350 South Grand Ave
25th Floor
Los Angeles, CA 90071-1503
(213) 229-9500
(213) 625-0248 – Facsimile

Britt M. Miller (*pro hac vice*)
bmiller@mayerbrown.com
71 South Wacker Drive
Chicago, IL 60606
(312) 782-0600
(312) 701-7711 – Facsimile

Attorneys for Defendant Computerized Vehicle Registration

*Additional Counsel Listed on
Signature Page*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MOTOR VEHICLE SOFTWARE CORPORATION.

Case No. 2:17-cv-896-DSF-AFM

Plaintiff,
V.

CDK GLOBAL, INC.; THE
REYNOLDS AND REYNOLDS
COMPANY; COMPUTERIZED
VEHICLE REGISTRATION, INC.,
a/k/a CDK VEHICLE
REGISTRATION, INC..

**DEFENDANT COMPUTERIZED
VEHICLE REGISTRATION'S
NOTICE OF MOTION AND
MOTION TO DISMISS THE
SECOND AMENDED COMPLAINT**

Complaint Filed: Nov. 2, 2017

Hearing: Jan. 8, 2018
Time: 1:30 p.m.
Place: Courtroom 7D

Judge: Hon. Dale S. Fischer

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on January 8, 2018 at 1:30 p.m., or as
 3 soon thereafter as the matter may be heard in Courtroom 7D of the above-
 4 referenced court, located at the First Street Courthouse, 350 West 1st Street, Los
 5 Angeles, California, Defendant Computerized Vehicle Registration (“CVR”)¹ will
 6 and hereby does move to dismiss the Second Amended Complaint in this action for
 7 failure to state a claim upon which relief can be granted because, *inter alia*, (i)
 8 CVR cannot conspire with either of the two other Defendants in this case under
 9 *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984); (ii) Plaintiff
 10 Motor Vehicle Software Corporation (“MVSC”) has not pled facts plausibly
 11 suggesting that CVR engaged in an unlawful conspiracy under *Bell Atlantic Corp.*
 12 *v. Twombly*, 550 U.S. 544 (2007), and its progeny; and (iii) MVSC has not pled
 13 that CVR engaged in any unilateral anticompetitive conduct. CVR also joins in the
 14 arguments in support of dismissal in the contemporaneously filed motions by
 15 Defendants CDK Global, Inc. and The Reynolds and Reynolds Co.

16 This Motion is brought pursuant to Federal Rule of Civil Procedure 12(b)(6)
 17 and is made following the conference of counsel pursuant to Local Rule 7-3, which
 18 took place on November 13, 2017. This Motion is based on this Notice of Motion,
 19 the accompanying Memorandum of Points and Authorities, the entire file of this
 20 action, and on such further argument as the Court may permit.

21

22

23

24

25

26 ¹ The complaint identifies CVR as Computerized Vehicle Registration, Inc. a/k/a CDK
 27 Vehicle Registration, Inc. As stated in its Certification and Notice of Interested Parties
 28 (Dkt. 36), CVR is a general partnership, not an “Inc.” Moreover, CDK Vehicle
 Registration, Inc. is the 80% owner of CVR, not an alias of the company.

1 Dated: November 16, 2017

Respectfully submitted,

2
3 By: /s/ John Nadolenco
4 MAYER BROWN LLP
5 John Nadolenco (SBN 181128)
6 *jnadolenco@mayerbrown.com*
7 350 South Grand Ave
8 25th Floor
9 Los Angeles, CA 90071-1503
10 (213) 229-9500
11 (213) 625-0248 – Facsimile

12
13 Britt M. Miller (*pro hac vice*)
14 *bmiller@mayerbrown.com*
15 71 South Wacker Drive
16 Chicago, IL 60606
17 (312) 782-0600
18 (312) 701-7711 – Facsimile

19
20 Mark W. Ryan (*pro hac vice*)
21 *mryan@mayerbrown.com*
22 1999 K Street, N.W.
23 Washington, DC 20006-1101
24 (202) 263-3000
25 (202) 263-3300 – Facsimile

26
27 *Attorneys for Defendant Computerized*
28 *Vehicle Registration*

1 MAYER BROWN LLP
2 John Nadolenco (SBN 181128)
3 *jnadolenco@mayerbrown.com*
4 350 South Grand Ave
25th Floor
Los Angeles, CA 90071-1503
(213) 229-9500
(213) 625-0248 – Facsimile

5 Britt M. Miller (*pro hac vice*)
6 *bmiller@mayerbrown.com*
7 71 South Wacker Drive
8 Chicago, IL 60606
(312) 782-0600
(312) 701-7711 – Facsimile

9 Attorneys for Defendant Computerized Vehicle Registration

*Additional Counsel Listed on
Signature Page*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

16 | MOTOR VEHICLE SOFTWARE CORPORATION.

17 Plaintiff,
18 v.

19 CDK GLOBAL, INC.; THE
20 REYNOLDS AND REYNOLDS
COMPANY; COMPUTERIZED
VEHICLE REGISTRATION, INC.
21 a/k/a CDK VEHICLE
REGISTRATION, INC..

Defendants.

Case No. 2:17-cv-896-DSF-AFM

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT COMPUTERIZED
VEHICLE REGISTRATION'S
MOTION TO DISMISS THE
SECOND AMENDED COMPLAINT**

Complaint Filed: Nov. 2, 2017

Hearing: Jan. 8, 2018
Time: 1:30 p.m.
Place: Courtroom 7D

Judge: Hon. Dale S. Fischer

INTRODUCTION

Two holdings by this Court in its ruling on Defendants' motion to dismiss the First Amended Complaint disposed of all allegations made by Plaintiff Motor Vehicle Software Corporation ("MVSC") against Computerized Vehicle Registration ("CVR").¹ First, the Court held that MVSC had not stated any claim against CVR for monopolization or attempted monopolization under Section 2 of the Sherman Act because CVR's unilateral activities were "consistent with legitimate competitive activity." Dkt. 73 ("MTD Op.") at 10. And second, the Court held that MVSC had not stated any claim for conspiracy to monopolize against CVR because MVSC had not "identif[ied] conspiratorial conversations between CVR and CDK or Reynolds." *Id.* at 11. MVSC's state-law claims, which are derivative of these federal claims, were likewise dismissed.

MVSC has effectively abandoned its unilateral Section 2 claims against CVR by adding no new allegations about them in its Second Amended Complaint. But in an attempt to save its conspiracy-to-monopolize claim and keep CVR in the case, it has added six new paragraphs to the complaint conveniently alleging, in conclusory fashion with almost no detail, that CVR supposedly participated in “conspiratorial conversations” with CDK and Reynolds.

19 MVSC’s new story clearly does not satisfy the standard of *Bell Atlantic*
20 *Corp. v. Twombly*, 550 U.S. 544 (2007): it has little to no ostensible factual or
21 evidentiary support and appears instead to be rank speculation aimed at staving off
22 CVR’s dismissal from the case. Indeed, if there were any truth to the allegations or
23 any actual supporting details, MVSC would have alleged them in one of its two
24 prior complaints and certainly would have provided the details now. It would not

²⁵ ²⁶ ²⁷ ¹ The complaint identifies CVR as Computerized Vehicle Registration, Inc. a/k/a CDK Vehicle Registration, Inc. As stated in its Certification and Notice of Interested Parties (Dkt. 36), CVR is a general partnership, not an “Inc.” Moreover, CDK Vehicle Registration, Inc. is the 80% owner of CVR, not an alias of the company.

1 have waited until this late in the day and for this Court to dismiss its conspiracy-to-
 2 monopolize claims only to make a handful of additional conclusory allegations.
 3 All of the claims against CVR in the Second Amended Complaint should
 4 accordingly be dismissed with prejudice.

5 **ARGUMENT**

6 MVSC's Section 2, conspiracy-to-monopolize claim fails for two reasons.
 7 First, CVR cannot conspire with either of the other Defendants as a matter of law
 8 under *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984),
 9 because they are alleged to be the owners that jointly control CVR. Second, even if
 10 it were possible for CVR to conspire with its own owners, MVSC has not alleged a
 11 conspiracy that meets the plausibility threshold set forth in *Twombly*. Given that
 12 MVSC has not stated any federal-law antitrust claim against CVR, its state-law
 13 claims against CVR likewise must be dismissed.²

14 **A. CVR Is Legally Incapable Of Conspiring With Its Owners Under
 15 The *Copperweld* Doctrine.**

16 Any claim that CVR conspired with the other Defendants, which are CVR's
 17 owners, necessarily fails. In *Copperweld*, the Supreme Court held that a company
 18 cannot conspire with its wholly owned subsidiary. This is true whether the
 19 conspiracy claim is brought under Section 1 or Section 2. *Vollrath Co. v. Sammi*
 20 *Corp.*, 1989 WL 201632, at *15 (C.D. Cal. Dec. 20, 1989), *aff'd*, 9 F.3d 1455 (9th
 21 Cir. 1993). Accordingly, it is impossible, as a matter of law, for CVR to conspire
 22 with CDK or Reynolds, or both of them, and any conspiracy claims against CVR

23 ² Although the Second Amended Complaint continues to include claims for
 24 monopolization and attempted monopolization against CVR (SAC ¶¶ 216-32), this Court
 25 previously held that MVSC had not alleged any unilateral conduct by CVR that rose to
 26 the level of monopolization or attempted monopolization (MTD Op. 10), and the Second
 27 Amended Complaint does nothing to remedy that deficiency. These claims should
 accordingly be dismissed.

1 must be dismissed.

2 For example, in *Stanislaus Food Products Co. v. USS-POSCO Industries*,
 3 the court applied *Copperweld*'s holding to dismiss antitrust conspiracy claims
 4 against a joint venture and its owners. 2010 WL 3521979, at *21-24 (E.D. Cal.
 5 Sept. 3, 2010). *Stanislaus* held that a plaintiff could not maintain an antitrust
 6 conspiracy claim against a joint venture and its parent corporations because “an
 7 economically integrated joint venture is a ‘single entity’ under *Copperweld* which
 8 is incapable of ‘conspiring’ for purposes of the Sherman Act.” *Id.* at *21 (citing
 9 *Freeman v. San Diego Ass’n of Realtors*, 322 F.3d 1133, 1148 (9th Cir. 2003)
 10 (“[w]here there is substantial common ownership . . . or an agreement to divide
 11 profits and losses, individual firms function as an economic unit and are generally
 12 treated as a single entity”)). Numerous other courts have applied the *Copperweld*
 13 doctrine to dismiss antitrust complaints against parents and non-wholly owned
 14 subsidiaries or joint ventures.

15 In particular, in *Bell Atlantic Business Systems Services v. Hitachi Data*
 16 *Systems Corp.*, the court held that a parent could not conspire with its 80%
 17 indirectly owned subsidiary as a matter of law. 849 F. Supp. 702, 706 (N.D. Cal.
 18 1994). Since CDK’s 80% stake in CVR is equivalent to the stake in *Hitachi*—and
 19 greater than the parent’s ownership stake in many other *Copperweld* progeny—
 20 there can be no serious argument that CDK can conspire with CVR.³ The same is
 21

22 ³ Many other courts have applied *Copperweld*'s “single-entity” rule based on similar
 23 levels of ownership or control. See, e.g., *Livingston Downs Racing Ass’n v. Jefferson*
Downs Corp., 257 F. Supp. 2d 819, 835-36 (M.D. La. 2002) (72.27% of voting stock);
Rohlfing v. Manor Care, Inc., 172 F.R.D. 330, 344 (N.D. Ill. 1997) (82.3% ownership);
Coast Cities Truck Sales, Inc. v. Navistar Int'l Transp. Co., 912 F. Supp. 747, 765-66
(D.N.J. 1995) (70%); *Viacom Int'l Inc. v. Time Inc.*, 785 F. Supp. 371, 374 n.6 & 383-84
(S.D.N.Y. 1992) (82%); *Leaco Enters., Inc. v. General Elec. Co.*, 737 F. Supp. 605, 608-
09 (D. Or. 1990) (91.9%). Even a 51% level of ownership has been deemed sufficient.
Novatel Commc’ns, Inc. v. Cellular Tel. Supply, Inc., 1986 WL 15507, at *6 (N.D. Ga.
Dec. 23, 1986).

1 true for Reynolds despite its smaller (20%) ownership stake; although MVSC has
 2 attempted to scrub allegations that Reynolds “controls” CVR from the Second
 3 Amended Complaint in an effort to save its Section 2 claims against CDK, the
 4 Second Amended Complaint nonetheless continues to allege that both “CDK and
 5 Reynolds . . . control the management and decisionmaking of CVR.” SAC ¶ 152.
 6 MVSC also continues to allege that Reynolds retains seats on CVR’s board (*id.* ¶
 7 110) and reaps profits from its interest in CVR (*id.* ¶ 55). That makes Reynolds,
 8 too, a participant in the “economically integrated joint venture” (*Stanislaus*, 2010
 9 WL 3521979, at *21) and incapable of conspiring with CVR.

10 Regardless, the Court need not look past the allegations of MVSC’s First
 11 Amended Complaint (“FAC”), which alleged that CDK and Reynolds both
 12 “owned” and “controlled” CVR. FAC ¶¶ 55, 141, 223. Any effort by MVSC to
 13 contradict these allegations in the SAC and to assert instead that CVR is under
 14 CDK’s sole control and not also controlled by Reynolds is impermissible and
 15 implausible. Allegations in an amended complaint may not contradict allegations
 16 made in an earlier complaint. *See, e.g., Rodriguez v. Sony Computer Entm’t Am.,*
 17 *LLC*, 801 F.3d 1045, 1054 (9th Cir. 2015) (affirming motion to dismiss, refusing to
 18 credit “artful[] pleading” in which “the more recent pleading completely
 19 contradicts the earlier pleading.”); *NetApp, Inc. v. Nimble Storage, Inc.*, 2015 WL
 20 400251, *4 (N.D. Cal. Jan. 29, 2015) (“When a court grants a party leave to amend
 21 a complaint on a motion to dismiss, the amended complaint may only allege other
 22 facts consistent with the challenged pleading.”) (Citation and quotation marks
 23 omitted).

24 **B. Allegations That CVR Conspired With The Other Defendants Are
 25 Not Plausible Under *Twombly*.**

26 Even assuming that CVR was legally capable of conspiring with its owners,
 27 the Second Amended Complaint fails to allege a conspiracy involving CVR and

either of the other Defendants that meets *Twombly*'s plausibility threshold. *See Twombly*, 550 U.S. at 555 (“a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do”) (alteration and internal quotation marks omitted); *id.* at 570 (a plaintiff must allege “enough facts to state a claim to relief that is plausible on its face”). MVSC's new, conclusory allegations regarding this conspiracy—produced for the first time in MVSC's *third* complaint, and only after this Court faulted MVSC for failing to show that CVR participated in any conspiracy—are implausible and insufficient.

In six new paragraphs added to its 90-page complaint (SAC ¶¶ 109-14), MVSC alleges that CVR executives had “conspiratorial conversations” with representatives of CDK and Reynolds at CVR board meetings, where they allegedly discussed “the need to block MVSC from accessing dealer data.” *Id.* ¶ 109. MVSC further alleges that CVR executives “worked with CDK to keep [CDK's] integration program ‘closed’ to MVSC.” *Id.* ¶ 112. But merely alleging that “conspiratorial conversations” happened does not make the allegation plausible.

These allegations are not backed up by any specifics. MVSC does not allege when the alleged conversations occurred, where they occurred, or how often they occurred. *See In re Vitalich*, 2016 WL 1644077, at *2 (Bankr. N.D. Cal. Apr. 22, 2016) (explaining that *Twombly* requires “specificity as to the traditional ‘who, what, where, and when’”). One new paragraph mentions an alleged internal CDK presentation supposedly evidencing a conspiracy, but even as MVSC describes it, that presentation suggests at most that CDK itself did not want to deal with CVR competitors, not that it conspired with CVR. SAC ¶ 112. Indeed, as to CVR's purported “conspiratorial conversations” with Reynolds, no specific conversation involving Reynolds is described, nor is any specific person from Reynolds

1 identified as a participant. These barebones allegations, particularly in the third
 2 draft of a complaint, are insufficient and should be dismissed. *Sumotext Corp. v.*
 3 *Zoove, Inc.*, 2017 WL 2774382, *5-6 (N.D. Cal. Jun. 26, 2017) (dismissing
 4 conspiracy to monopolize claim in Second Amended Complaint because amended
 5 allegations were “bare bones” and alleged “ultimate facts.”).

6 MVSC cites a supposed admission by an unidentified “long-time member”
 7 of CVR’s board, but even on MVSC’s account, which defendants intend to dispute,
 8 that board member said only that “board members agreed that CVR needed a
 9 competitive advantage as compared to its competitors”—not that they reached any
 10 unlawful agreement to achieve that advantage. SAC ¶ 110.⁴ In light of MVSC’s
 11 admittedly dominant and growing market share in California and Oregon, it would
 12 not be surprising for CVR and its board members to be discussing the “need” for
 13 CVR to more effectively compete and gain an edge against MVSC if possible. *See*
 14 *id.* (alleging that board discussions centered around concern that MVSC
 15 “outcompeted CVR”). What else should CVR board members discuss other than
 16 how CVR can do better and improve its competitive position? Given these
 17 manifold problems with MVSC’s new conspiracy theory, the Second Amended
 18 Complaint clearly does not “raise [its] right to relief” on a conspiracy-to-
 19 monopolize claim “above the speculative level.” *Twombly*, 550 U.S. at 555.

20 **C. The State Law Claims Against CVR Must Be Dismissed**

21 As the Court noted in its prior opinion (MTD Op. 12), the analysis
 22 underlying MVSC’s state-law claims tracks the analysis under federal antitrust
 23 law. Because MVSC has failed to state a claim under the Sherman Act, its state-
 24 law claims against CVR also must be dismissed.

25 ⁴ To the extent this allegation suggests that CVR sought to outcompete MVSC, it
 26 fails to support a conspiracy claim. “[S]harp business practices are not per se violations
 27 of the Sherman Act.” *Romolo Capobianco, Inc. v. Owens*, 1984 WL 1449, at *3 (D.
 Mass. Nov. 30, 1984).

CONCLUSION

The eleventh-hour allegations in MVSC’s latest complaint do nothing to rescue its flawed conspiracy-to-monopolize claim. MVSC’s claims against CVR should accordingly be dismissed with prejudice.

Respectfully submitted,

By: /s/ John Nadolenco
MAYER BROWN LLP
John Nadolenco (SBN 181128)
jnadolenco@mayerbrown.com
350 South Grand Ave
25th Floor
Los Angeles, CA 90071-1503
(213) 229-9500
(213) 625-0248 – Facsimile

Britt M. Miller (*pro hac vice*)
bmiller@mayerbrown.com
71 South Wacker Drive
Chicago, IL 60606
(312) 782-0600
(312) 701-7711 – Facsimile

Mark W. Ryan (*pro hac vice*)
mryan@mayerbrown.com
1999 K Street, N.W.
Washington, DC 20006-1101
(202) 263-3000
(202) 263-3300 – Facsimile

*Attorneys for Defendant Computerized
Vehicle Registration*

1

2

2

1

6

9

10

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MOTOR VEHICLE SOFTWARE CORPORATION.

Case No. 2:17-cv-896-DSF-AFM

Plaintiff,

V.

18 CDK GLOBAL, INC.; THE
19 REYNOLDS AND REYNOLDS
20 COMPANY; COMPUTERIZED
21 VEHICLE REGISTRATION, INC.,
a/k/a CDK VEHICLE
REGISTRATION, INC.

**[PROPOSED] ORDER
GRANTING DEFENDANT
COMPUTERIZED VEHICLE
REGISTRATION'S MOTION
TO DISMISS THE SECOND
AMENDED COMPLAINT**

Complaint filed: Nov. 2, 2017

Hearing: Jan. 8, 2018

Time: 1:30 pm

Place: Courtroom 7D

Judge: Hon. Dale S. Fischer

[PROPOSED] ORDER

Before the Court is Computerized Vehicle Registration’s (“CVR’s”) Motion to Dismiss Plaintiff Motor Vehicle Software Corporation’s (“Plaintiff’s”) Second Amended Complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Having fully considered the briefs and evidence submitted by the parties, all other relevant documents on file in this matter, and the oral arguments of counsel:

IT IS HEREBY ORDERED THAT:

1. CVR's Motion to Dismiss is GRANTED in its entirety.
2. Plaintiff's Second Amended Complaint is DISMISSED WITH

PREJUDICE because it fails to state a claim against CVR upon which relief can be granted.

IT IS SO ORDERED.

DATED:

Hon. Dale S. Fischer
UNITED STATES DISTRICT COURT JUDGE